

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

AMERICAN AIRLINES, INC.,

Plaintiff,

v.

THE CITY OF CHICAGO and MICHAEL P.
MCMURRAY, in his capacity as the
Commissioner of the Chicago Department of
Aviation,

Defendants.

Case No. 25-cv-4874

Hon. Judge Joan H. Lefkow

**AMERICAN AIRLINES, INC.’S MOTION FOR LEAVE TO FILE
A SURRESPONSE TO DEFENDANTS’ REPLY TO
UNITED AIRLINES, INC.’S MOTION TO INTERVENE**

Plaintiff American Airlines, Inc. (“American”) respectfully moves this Court for leave to file a Surrespouse to Defendants’ Reply to United Airlines, Inc.’s (“United”) Motion to Intervene.

In support of this motion, American states the following:

1. On May 5, 2025, United filed a Motion to Intervene in this action. Dkt. Nos. 6-7.
2. On May 7, 2025, the Court ordered that “[a]ny response to the motion to intervene is due by 5/20/2025; reply is due by 5/28/2025.” Dkt. No. 17.
3. On May 20, 2025, American filed its Opposition to United’s Motion to Intervene. Dkt. No. 26. Defendants the City of Chicago and Michael P. McMurray (together, the “City”) did not file any response to United’s Motion to Intervene on or before that date.
4. Instead, on May 28, 2025, the City filed a document styled as a “Reply to American Airlines, Inc.’s Memorandum in Opposition to United Airlines, Inc.’s Motion to Intervene” (the “Reply”). Dkt. No. 28. In fact, the City’s Reply was in support of United’s Motion to Intervene.

5. Later on May 28, 2025, United also filed its own Reply to its Motion to Intervene. Dkt. No. 29.

6. This Court’s Rules do not contemplate replies to motions from non-movants. *See* L.R. 56.1(c), 78.3; *cf.* L.C.R. 47.1 (“*The moving party* may file a reply brief . . .” (emphasis added)). And this Court’s May 7, 2025, order envisioned that there would be a single “reply” to United’s Motion to Intervene—from United. Dkt. No. 17. The City’s Reply is at odds with the Rules and the Court’s order.

7. The City’s Reply was also untimely. If the City wanted to respond—whether in support of or in opposition to—United’s Motion to Intervene, it was required to file a “response” no later than May 20, 2025, as American did. *Id.*

8. The City’s Reply also prejudices American, raising new arguments about the substance of American’s relationship with the City and its lease agreement with the City at O’Hare International Airport. *See* Dkt. No. 28, at 1 (stating that the City’s Reply “provides the Court with helpful context” not raised in United’s Motion to Intervene concerning “the rights and obligations of the City and its airline partners under” the airlines’ leases).

9. The City’s new arguments could not have been addressed in American’s Opposition to United’s Motion to Intervene, and American seeks a fair opportunity to address them now and to clarify the record. This “Court has discretion to approve of surresponses.” *Johnson v. McDonald*, No. 15-CV-11092, 2020 WL 374679, at *1 n.1 (N.D. Ill. Jan. 23, 2020) (citing *Johnny Blastoff, Inc. v. L.A. Rams Football Co.*, 188 F.3d 427, 439 (7th Cir. 1999)). And doing so is particularly appropriate where the surresponse “responds directly to arguments first made” in a reply brief. *Id.*; *see also Monfardini v. Quinlan*, No. 02 C 50083, 2002 WL 1264005, at *2 (N.D. Ill. June 4, 2002) (permitting surresponse where party “waited until his reply brief” to file

supporting material). A surresponse is thus essential to “vouchsafe[] [American’s] right to be heard and provides the court with the information necessary to make an informed decision.” *Univ. Healthsystem Consortium v. United Health Grp., Inc.*, 68 F. Supp. 3d 917, 922 (N.D. Ill. 2014).

10. American’s proposed Surresponse is attached hereto as Exhibit 1.

WHEREFORE, American respectfully requests that the Court grant American leave to file a Surresponse and docket the proposed Surresponse attached as Exhibit 1.

Dated: June 5, 2025

Respectfully submitted,

/s/ Sean Berkowitz

Sean Berkowitz (ARDC No. 6209701)
Garrett S. Long (ARDC No. 6290075)
LATHAM & WATKINS LLP
330 North Wabash Avenue, Suite 2800
Chicago, IL 60611
Telephone: (312) 876-7700
Fax: (312) 993-9767
sean.berkowitz@lw.com
garrett.long@lw.com

David C. Tolley (admitted *pro hac vice*)
LATHAM & WATKINS LLP
200 Clarendon Street
Boston, MA 02116
Telephone: (617) 948-6000
Fax: (617) 948-6001
david.tolley@lw.com

Attorneys for American Airlines, Inc.

CERTIFICATE OF SERVICE

I, Sean Berkowitz, an attorney, certify that on June 5, 2025, I caused a true and correct copy of the foregoing document to be electronically filed with the Clerk of Court using CM/ECF, which will serve on all counsel of record.

/s/ Sean Berkowitz
Sean Berkowitz